

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

**NATIONAL NURSES ORGANIZING  
COMMITTEE-TEXAS/NATIONAL NURSES  
UNITED (BAY AREA HEALTHCARE GROUP,  
LTD. d/b/a CORPUS CHRISTI MEDICAL  
CENTER AN INDIRECT SUBSIDIARY OF HCA  
HOLDINGS, INC.)**

**Respondent**

**and**

**Case 16-CB-225123**

**ESTHER MARISSA ZAMORA, an Individual**

**Charging Party**

**MOTION OF THE ACTING GENERAL COUNSEL  
TO THE NATIONAL LABOR RELATIONS BOARD  
TO REMAND THE COMPLAINT TO THE REGIONAL DIRECTOR FOR DISMISSAL  
OR, ALTERNATIVELY, TO DISMISS THE COMPLAINT**

Pursuant to Section 102.24 of the Board's Rules and Regulations, Counsel for the Acting General Counsel hereby submits this Motion and urges the Board to Remand the Complaint to the Regional Director so that he may withdraw the Complaint in the above case and dismiss the charge, as the Acting General Counsel has determined that further prosecution of the Complaint undermines current Board law and is not in the public interest. Alternatively, the Acting General Counsel moves the Board to dismiss the Complaint.

The Region issued Complaint in this matter on October 31, 2019 alleging, *inter alia*, that National Nurses Organizing Committee-Texas/National Nurses United (Respondent) violated its duty of fair representation and Section 8(b)(1)(A) of the Act by refusing to provide the Charging Party with a copy of a neutrality agreement Respondent purportedly maintains with the Employer.

(GCX 1(g))<sup>1</sup>. A hearing took place on February 4 and 5, 2020 in Corpus Christi, Texas before Administrative Law Judge (ALJ) Keltner W. Locke after which he issued a decision recommending dismissal of the Complaint<sup>2</sup> in its entirety. *See National Nurses Organizing Committee-Texas/National Nurses United (Bay Area Healthcare Group, LTD. d/b/a Corpus Christi Medical Center an Indirect Subsidiary of HCA Holdings, Inc.)*, (JD-29-20) (June 24, 2020).

On September 2, 2020, the undersigned Counsel for then General Counsel Peter Robb filed exceptions and a brief in support to the ALJ's dismissal of the Complaint. On October 28, 2020, Counsel for then General Counsel Robb filed a reply brief to Respondent's answering brief. On November 11, 2020, Counsel for then General Counsel Robb filed an answering brief to Respondent's cross exceptions. Finally, on January 4, 2021, Counsel for then General Counsel Robb filed a brief in opposition to the amicus brief of the AFL-CIO. The case is currently pending before the Board.

Former General Counsel Robb's term ended on January 20, 2021, and Acting General Counsel Peter Sung Ohr was designated by President Biden on January 25, 2021. Acting General Counsel Ohr disagrees with the arguments set forth in Counsel for the former General Counsel's brief(s) to find the Respondent Union's conduct violative of Section 8(b)(1)(A). Acting General Counsel Ohr views the Complaint allegations to be inconsistent with extant Board law given the record evidence and nature of the request for information seeking a neutrality agreement. The Acting General Counsel agrees with the ALJ's determination that the record evidence failed to establish that any term or condition of employment of bargaining unit employees was determined,

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<sup>1</sup> Abbreviated references are employed as follows: "ALJD" followed by page and line numbers to designate the ALJ's Decision; "GCX" followed by exhibit number to designate General Counsel's Exhibits.

<sup>2</sup> The Complaint was amended orally at the hearing to allege that Respondent further violated Section 8(b)(1)(A) of the Act by responding to the Charging Party's information request in a manner that was arbitrary and/or in bad faith.

controlled, or affected by any agreement entered into by the Respondent other than the collective bargaining agreement between the Respondent and the Employer, together with the “side letters” and memorandum of understanding it references. (ALJD at 1). The Acting General Counsel asserts that Respondent’s failure to provide a document not shown to relate to terms and conditions of employment or its responsibilities as the exclusive bargaining representative did not violate Section 8(b)(1)(A) of the Act. (ALJD at 1).

Counsel for Acting General Counsel Ohr therefore moves the Board to Remand this matter to the Regional Director so that he may withdraw the Complaint and dismiss the charge, as it is inconsistent with Board law and Circuit Court enforcement thereof. Alternatively, the Acting General Counsel moves the Board to dismiss the Complaint based on his decision to cease prosecution of the Complaint as such pursuit is a waste of valuable Agency resources and not in the public interest.

Accordingly, Counsel for Acting General Counsel Ohr hereby moves the Board to Remand this matter to the Regional Director so that he may withdraw the Complaint in the above case or, alternatively, to dismiss the Complaint.

**DATED** at Fort Worth, Texas this 23<sup>rd</sup> day of February 2021.

/s/ Roberto Perez  
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## **CERTIFICATE OF SERVICE**

I hereby certify that copies of the Motion of the Acting General Counsel to the National Labor Relations Board to Remand the Complaint to the Regional Director for Dismissal or, alternatively, to Dismiss the Complaint was served on this 23<sup>rd</sup> day of February 2021, on the following persons by email:

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